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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 MELANIE R.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

CASE NO. 3:20-cv-05870-BAT

**ORDER REVERSING THE
COMMISSIONER'S FINAL DECISION
AND REMANDING FOR FURTHER
PROCEEDINGS**

13 Plaintiff appeals the ALJ's decision finding her not disabled. The ALJ found right
14 shoulder abnormality, status post-surgery, spinal abnormality, status post-surgery, and lumbar
15 degenerative disc disease are severe impairments; Plaintiff has the residual functional capacity
16 (RFC) to perform light work with additional limitations; and Plaintiff can perform past relevant
17 work. Tr. 43-55.

18 Plaintiff contends the ALJ misevaluated three medical opinions and failed to give valid
19 reasons to discount Plaintiff's testimony. Dkt. 14. For the reasons below, the Court **REVERSES**
20 the Commissioner's final decision and **REMANDS** the matter for further administrative
21 proceedings under sentence four of 42 U.S.C. § 405(g).

22 **DISCUSSION**

23 The Court may set aside the Commissioner's denial of Social Security benefits only if the

1 ALJ's decision is based on legal error or not supported by substantial evidence in the record as a
2 whole. *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017).

3 **A. Medical Opinions**

4 Plaintiff filed her disability claim in 2018. The regulations effective March 27, 2017, 20
5 C.F.R. §§ 404.1520c(c), 416.920c(c), require the ALJ to articulate how persuasive the ALJ finds
6 medical opinions and to explain how the ALJ considered the supportability and consistency
7 factors. 20 C.F.R. §§ 404.1520c(a), (b), 416.920c(a), (b). The regulations require an ALJ to
8 specifically account for the legitimate factors of supportability and consistency in addressing the
9 persuasiveness of a medical opinion. The ALJ must provide specific and legitimate reasons to
10 reject a doctor's opinions. *See, e.g., Kathleen G. v. Comm'r of Soc. Sec.*, No. C20-461 RSM,
11 2020 WL 6581012, at *3 (W.D. Wash. Nov. 10, 2020) (finding that the new regulations do not
12 clearly supersede the "specific and legitimate" standard because the "specific and legitimate"
13 standard refers not to how an *ALJ* should weigh or evaluate opinions, but rather the standard by
14 which the *Court* evaluates whether the ALJ has reasonably articulated his or her consideration of
15 the evidence).

16 Further, the Court must continue to consider whether the ALJ's analysis is supported by
17 substantial evidence. *See* Revisions to Rules Regarding the Evaluation of Medical Evidence, 82
18 Fed. Reg. 5852 (January 18, 2017) ("Courts reviewing claims under our current rules have
19 focused more on whether we sufficiently articulated the weight we gave treating source opinions,
20 rather than on whether substantial evidence supports our final decision ... [T]hese courts, in
21 reviewing final agency decisions, are reweighing evidence instead of applying the substantial
22 evidence standard of review, which is intended to be highly deferential standard to us."). With
23 the above mind, the Court reviews the ALJ's findings regarding the medical evidence.

1 ***1. Steven P. Nadler, M.D.***

2 Dr. Nadler examined Plaintiff in May 2012 and opined she “could perform only
3 sedentary work, should avoid lifting heavy objects more than 15 to 20 pounds, and should avoid
4 work that requires repeated bending.” Tr. 51. Although the ALJ found Dr. Nadler’s opinion
5 “mostly persuasive,” the ALJ determined that “[r]ather than a straight sedentary level of
6 exertion, however, the evidence supports a modified level of light duty, with only four hours
7 standing and walking.” *Id.*

8 The ALJ first discounted Dr. Nadler’s opinion as inconsistent with “the claimant’s
9 longitudinal record” and “the medical evidence discussed previously in this decision.” Tr. 51.
10 The ALJ’s finding is legally insufficient, as vague and conclusory references to the “longitudinal
11 record” and “medical evidence discussed previously” fail to provide a cogent explication for
12 discounting Dr. Nadler’s opinion. *See Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)
13 (ALJ errs in rejecting medical opinion when listing, without further explanation, medical
14 evidence seriatim). The ALJ’s recitation of the medical evidence “discussed previously” does not
15 flesh out why Plaintiff is limited to light rather than sedentary work. It is not the job of the
16 reviewing court to comb the administrative record to find specific conflicts. *Burrell v. Colvin*,
17 775 F.3d 1133, 1138 (9th Cir. 2014). The ALJ’s conclusory finding is not a valid basis to
18 discount Dr. Nadler’s opinion.

19 Next, the ALJ discounted Dr. Nadler’s opinion as inconsistent with “his own exam
20 findings.” Tr. 51. While the ALJ may discount a doctor’s opinions when they are inconsistent
21 with or unsupported by the doctor’s own clinical findings, *see Tommasetti v. Astrue*, 533 F.3d
22 1035, 1041 (9th Cir. 2008), here the ALJ erred by failing to explicate why Dr. Nadler’s exam
23

1 findings undermine his opinion. *See, e.g., Embrey*, 849 F.2d at 421-22 (in setting “forth his own
2 interpretations,” an ALJ is required “explain why they, rather than the doctors,’ are correct”).

3 Finally, the ALJ discounted Dr. Nadler’s opinion as inconsistent with Plaintiff’s
4 activities. Tr. 51. Substantial evidence does not support this finding. The ALJ cites minimal
5 activities, such as Plaintiff’s ability to “care for herself, feed herself, use a computer” and “pay
6 bills, count change, handle a savings account, [and] use a checkbook or money orders.” *Id.* These
7 activities neither are reasonably related to nor contradict Dr. Nadler’s opined limitation to
8 sedentary work. The ALJ necessarily erred by discounting Dr. Nadler’s opinion on this ground.

9 For the foregoing reasons, the ALJ harmfully erroneously discounted Dr. Nadler’s
10 opinion.

11 **2. *James Irwin, M.D. and Desmond Tuason, M.D.***

12 Dr. Irwin reviewed Plaintiff’s records and opined she was limited to sedentary work. Tr.
13 110. Dr. Tuason, in affirming Dr. Irwin, reached the same conclusion. *See* Tr. 122. In assessing
14 Drs. Irwin and Tuason’s opinions, however, the ALJ did not address their opinions that Plaintiff
15 is limited to sedentary work. The ALJ accordingly erred. *See* SSR 96-8p (“If the RFC assessment
16 conflicts with an opinion from a medical source, the adjudicator must explain why the opinion
17 was not adopted.”)

18 The ALJ also discounted the doctors’ opinion Plaintiff “could occasionally reach
19 overheard and handle with her right upper extremities.” Tr. 50. The ALJ rejected this limitation
20 as inconsistent with “claimant’s record as a whole, the medical and other evidence previously
21 discussed throughout this decision,” and Plaintiff’s activities. *Id.* at 51. As discussed above, these
22 conclusory statements are legally insufficient and, in the case of Plaintiff’s activities, not
23 supported by substantial evidence.

1 For the foregoing reasons, the ALJ erred by discounting Drs. Irwin and Tuason's
2 opinions.

3 **B. Plaintiff's Testimony**

4 As the ALJ found Plaintiff presented objective medical evidence establishing underlying
5 impairments that could cause the symptoms alleged, and did not find Plaintiff was malingering,
6 the ALJ was required to provide "specific, clear, and convincing" reasons supported by
7 substantial evidence to reject Plaintiff's testimony regarding the severity of her symptoms. *See*
8 *Trevizo*, 871 F.3d at 678.

9 The ALJ indicated Plaintiff testified "she was unable to work due to her impairments and
10 symptoms, which included chronic and debilitating shoulder, back, and leg pain, fatigue,
11 numbness and loss of tingling in her lower extremities, urinary incontinence, asthma symptoms,
12 sensitivity to smoke and odors, increased sensitivity to cold temperatures, and feelings of
13 depression and anxiety." Tr. 45. The ALJ further indicated Plaintiff testified "medications that
14 she took for her impairments were ineffective in controlling her symptoms and caused unwanted
15 side effects, such as mental foginess." *Id.* Finally, the ALJ indicated Plaintiff testified "her
16 impairments and symptoms limited her ability to lift, squat, bend, stand, reach, walk, sit, kneel,
17 climb stairs, sleep, complete tasks, use her hands, and finish what she started, and caused her to
18 have to shift positions frequently and lay down in a prone position regularly." *Id.*

19 The ALJ discounted Plaintiff's testimony as inconsistent with the medical evidence. Tr.
20 46-48. However, because the medical evidence must be reassessed, as described above, so too
21 must Plaintiff's testimony. The ALJ also discounted Plaintiff's testimony as inconsistent with her
22 activities. *Id.* at 49-50. Substantial evidence does not support this finding. As discussed above,
23 the ALJ cites minimal activities, such as "using social media, watching television, watching

1 movies, paying bills, counting change” and “responding to questions from medical providers,”
2 *id.* at 49, that do not undercut Plaintiff’s claims. *See Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th
3 Cir. 2001) (“This court has repeatedly asserted that the mere fact that a plaintiff has carried on
4 certain daily activities, such as grocery shopping, driving a car, or limited walking for exercise,
5 does not in any way detract from her credibility as to her overall disability. One does not need to
6 be ‘utterly incapacitated’ in order to be disabled.”) (quoting *Fair v. Bowen*, 885 F.2d 597, 603
7 (9th Cir. 1989)); *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir. 1987) (noting that a disability
8 claimant need not “vegetate in a dark room” in order to be deemed eligible for benefits). The
9 ALJ accordingly erred by discounting Plaintiff’s testimony.

10 CONCLUSION

11 The Court finds the ALJ erroneously evaluated the medical evidence and Plaintiff’s
12 testimony. Plaintiff argues if the Court finds the ALJ harmfully erred, the Court should remand
13 the case for calculation of an award of benefits. Remand for award of benefits should be ordered
14 in only the rare case in which there is nothing in the record to weigh and where the record leads
15 to only one reasonable conclusion: the claimant is disabled. Here, the ALJ failed to give
16 sufficient reasons to reject medical opinions and Plaintiff’s testimony. The ALJ, not the Court,
17 should assess whether there are, or there are not valid reasons supported by substantial evidence
18 to accept this evidence, or not. Additional proceedings would thus be beneficial, and the Court
19 accordingly **REVERSES** the Commissioner’s final decision and **REMANDS** the case for
20 further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

21 On remand, the ALJ shall reevaluate the medical opinions discussed above and Plaintiff’s
22 testimony, develop the record and redetermine Plaintiff’s RFC as needed, and continue to the
23 remaining steps as appropriate.

1 DATED this 30th day of April 2021.

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4 BRIAN A. TSUCHIDA
5 United States Magistrate Judge
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